

CA20N
SM
-57H36

Government
Publications



ONTARIO

New Democratic Party
Research Department

An Historical Review of
Ontario Legislation
on

CHILD
WELFARE



Q4303
713
Pw

RIO DEPARTMENT OF PUBLIC WELFARE

PRICE \$1.00

Government
Publications

CA2DN
SM
-57H36



ONTARIO

An Historical Review of
Ontario Legislation
on
CHILD
WELFARE



ONTARIO DEPARTMENT OF PUBLIC WELFARE

[1957]
PRICE \$1.00

This is a study of significant legislation
as related to children in Ontario
from 1791 to the present
by
C. OWEN SPETTIGUE, B.A., B.S.W.

CHILD WELFARE

I hold it for indisputable, that the first duty of a State is to see that every child born therein shall be well housed, clothed, fed, and educated, till it attains years of discretion. But in order to the effecting this the Government must have an authority over the people of which we now do not so much as dream.

—John Ruskin
1819-1900

It is not now known if, when John Ruskin penned these lines, he envisaged a Children's Magna Charta—a fundamental law guaranteeing the rights of Children. In any event, so far as Ontario is concerned, that would seem to be just about the best description of the Province's Child Welfare Legislation, the story of which is told here.

In this outline will be found the evolution of progressive and enlightened legislation designed to protect the rights of children. Here is the development of laws which shield our children from the abuses of society. The hazards which minors encounter are well described.

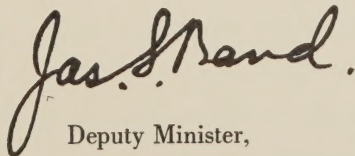
The century and a half of humane legislation reviewed in these pages is an unsought tribute to the solicitude and concern of the members of each succeeding Legislative Assembly down through the years who have given Ontario a Bill of Rights for children unsurpassed in any other jurisdiction.

This unique pattern which Ontario has evolved to serve its children has been thoroughly traced by Mr. C. Owen Spettigue, B.A., B.S.W., now completing his law studies at Osgoode Hall, Toronto.

All credit is given the Children's Aid Societies of Ontario in their dedicated services. They have had the major responsibility in maintaining the activities related to the administration of the legislation vested in them by the Governments of the Province.

It is our hope that we have presented a picture of the activities of the past and a guide for the future. These were the major reasons for the preparation of this review and its publication in this form. Within these pages we feel we have established that there exists in Government proven performance along with the desire to safeguard the destiny of our greatest asset—our children.

At the same time, we hope that this review will serve as a valuable aid to those who find themselves concerned with the problems of our young people.



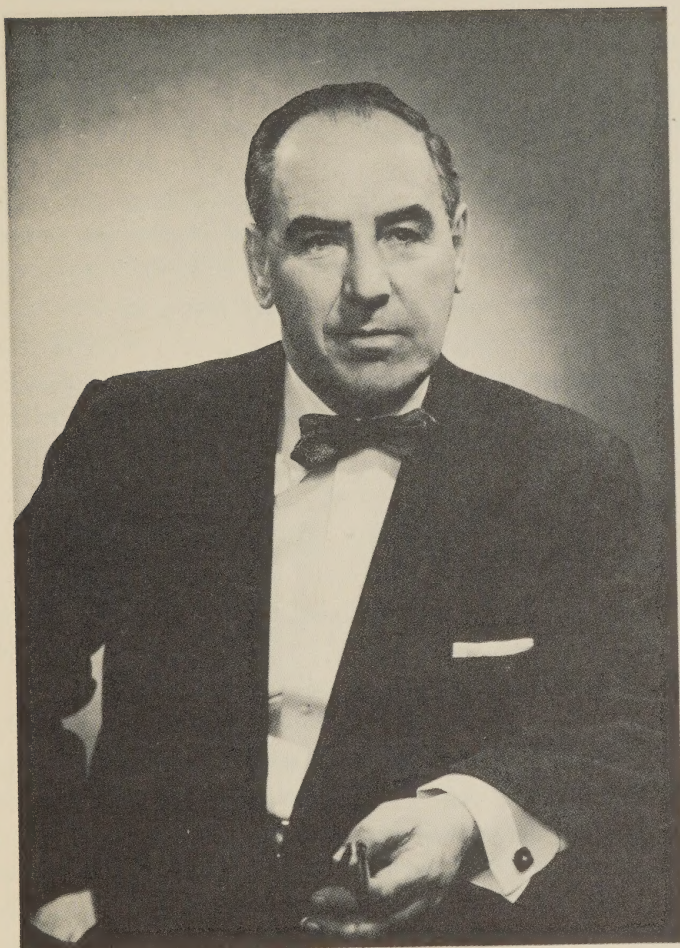
Deputy Minister,
Department of Public Welfare.

INDEX

<i>A Message from James S. Band, Deputy Minister, Department of Public Welfare</i>	3
FOUR PERIODS OF LEGISLATION	9
THE PIONEERING PERIOD—1791 TO 1840	10
1799 Orphans	10
Jails for Idle	10
Child Murder	11
Guardianship in 1827	11
Few Rights for Mothers	12
Seduction in 1837	12
Putative Fathers	13
Government and Human Rights	14
Amendments and Criticism	14
1812 Pensions for Widows	15
Immigrants and Insane	15
Provincial Grants Begin	16
The First Half Century	16
THE PRE-CONFEDERATION PERIOD—1840 TO 1867	18
Apprentices and Minors	18
Custody of Infants	19
Juvenile Delinquents	20
Grants in Aid	21
Juvenile Code	21
Parent Protection	22
Infants' Estates	22
THE CONSOLIDATING PERIOD—1867 TO 1893	24
Employer Like Parent	24
Infants' Act	25
Married Women's Property Rights	27

INDEX


<i>Protection of Infants</i>	27
<i>Amendments Re Boarding Homes</i>	28
<i>Houses of Industry</i>	28
<i>Humane Society</i>	29
<i>Neglected Children</i>	29
<i>The Tender Years</i>	30
<i>Pot Pourri</i>	30
<i>Hospital for Drunks</i>	31
<i>The Rise of Foster Homes</i>	31
<i>Attempt at Reform</i>	32
<i>Children in Factories</i>	33
<i>Family Solidarity</i>	34
<i>Volumes of Legislation</i>	35
<i>Children as Assets</i>	35
 THE MODERN PERIOD—COMMENCING IN 1893	36
<i>Child Defined</i>	36
<i>The Curfew</i>	37
<i>Foster Parents</i>	37
<i>The Child Welfare Act</i>	38
<i>Children of Unmarried Parents</i>	39
<i>Reform Coming</i>	39
<i>Adoptions</i>	40
<i>Three in One</i>	41
<i>Mothers' Allowances</i>	41
<i>World War II</i>	42
<i>Deserted Wives</i>	42
<i>Care of Parents</i>	43
<i>Legitimation</i>	44
 A CENTURY OF PROGRESS IN THE WELFARE OF CHILDREN	45
 CHRONOLOGICAL INDEX	46



HONOURABLE LOUIS P. CECILE, Q.C., LL.D.

Minister of Public Welfare

Province of Ontario



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114708126>

CHILD WELFARE

An Historical Review of Child Welfare Legislation in Ontario

During the century and a half since 1791, Ontario has accumulated an imposing array of welfare legislation.

Even during the first few years of its existence as the Province of Upper Canada, when governments and citizens were reputedly not as interested in human welfare as they are now, much legislation was passed granting aid to children and the poor.

Almost all of what is now known as Social Legislation can be justified upon purely economic grounds.

Even though the original intention of the state may have been its own protection, the ultimate effect of such legislation must inevitably be humanitarian because it provides an opportunity for all to obtain a just measure of happiness.

Four Periods of Legislation

In considering welfare legislation, four chronological divisions became apparent. These are:

First, 1791 to 1840—the half century after the establishment of the Province of Upper Canada as an autonomous government;

Second, 1840 to 1867—the period which followed the union of Upper and Lower Canada as the Province of Canada under a single governmental body.

Third, 1867 to 1893—this is the period between the passing of the British North America Act and the passing of the Children's Protection Act in 1893;

Fourth, 1893—the passing of the Children's Protection Act in 1893 laid the framework for most of the present day child welfare statutes and institutions, and heralded the birth of our modern legislation and approach to human needs.

The legislation itself naturally divides into two categories—

Statutes which directly pertain to the four classes which are discussed here, and which are now administered in an amended form by the Ontario Department of Public Welfare, and

Statutes which indirectly benefit any one of those classes but which either have been repealed or are at present administered in amended form by other departments.

The Welfare of Children in the Period 1791 to 1840

It must be borne in mind that the Province of Upper Canada in 1792 proclaimed that the Common Law of England would be the law in force in the new province. This law was, by today's standards, exceedingly harsh.

For this reason, as public attitudes changed, the Common Law was gradually repealed and statutory provisions of a more generous nature were introduced.

It is interesting to observe the change in public attitude as reflected in the very wording of the acts themselves.

For example, an act in 1810 described certain people as being *incorrigible*, *rogues* and *idlers* who, in the light of modern psychology, are now generally referred to as *indigents* or perhaps *incorrigibles*, although these terms have several interpretations.

1799 ORPHANS

The first act concerning children was passed in 1799 shortly after the Province had been constituted.

This was an act dealing with the care of orphans, and giving power to town wardens, with the signed consent of two Justices of the Peace, to bind an orphan as an apprentice. The mother of the child could likewise bind him if he and she were abandoned by the father, but neither the officials nor the mother could bind a child over 14 years of age without his consent.

Although passed ostensibly to provide for the education and support of orphans and destitute children, it is doubtful that the act really accomplished what it professed to do.

The municipal districts at this time were administered by magistrates or Justices of the Peace who were untrained for their work and were generally uninterested in the needs of the communities. Nearly a century was to pass before people realized the appalling circumstances of many of these children.

Many were wandering the streets or working in unbearable situations, and many had so little education. They either did not know or could not state their own age, and fewer still could write.

JAILS FOR IDLE

The Houses of Correction Act 1810, reflects the increasing concern of government for the number of idle, unemployed men wandering the countryside.

This statute was to be effective only until more facilities became available. The act stated that until further notice, all jails were to be *Houses of Correction* for the detention of rogues and idlers, and disorderly people, and all others subject to being put in a House of Correction could be detained in the jails until more Houses of Correction were available.

CHILD MURDER

Directly related to the Orphan's Act is the Act to Prevent the Destroying and Murdering of Bastard Children, passed in 1826.

This act repealed the English laws which were considered as *being impractical to enforce and too difficult to understand*.

The statute stated that women killing their illegitimate children were to be tried for murder under exactly the same rules of evidence as for any other murder. If the child were dead or died shortly after birth, however, and the mother tried only to conceal the birth, she was liable for a much lesser offence.

GUARDIANSHIP IN 1827

The Orphan's Act was probably never correctly administered since there is no doubt the act was invoked by unwed mothers or by municipal officials to bind these children as apprentices in order to prevent their becoming public charges.

In 1827 the *Guardianship Act* was passed.

The preamble to the act clearly states the reasons —

“Recognizing that there are a large number of infants in the province under 21 years of age without fathers or parents or guardians, it is necessary to make further provisions for them”.

The act then provided that guardians could be appointed by the Probate or Surrogate Courts in their areas after 20 days' notice to the mother, if living, and to the public.

The court could then appoint a guardian for any duration and under such terms as it saw fit. The guardian was to have full legal powers over the child and power to bind the child as an apprentice until marriage or, in the case of boys, until 21 and girls until 18.

The guardian could be relieved of his guardianship for a reason satisfactory to the court such as cruelty or lack of proper food and clothing, or if the child refused to obey and the guardian wished to be relieved of his responsibility.

FEW RIGHTS FOR MOTHERS

At this time, the rights of a mother were almost non-existent, the law being that a mother could have custody of a child during the years of growth, that is up to 7. She was then regarded as having no more rights than a stranger.

In two cases (*Haleshed* and *Brandon*) it was clearly established that a mother's rights were subordinate to the father's and the father of an illegitimate child was held to have more rights to the custody of his issue than the maternal grandparents.

This rather strict law was mitigated somewhat by the courts, in practice.

In a case reported as *Anonymous* but found in *Grant's Reports*, the courts admitted the right of a father to appoint a guardian in his will and deprive his wife of custody of the child, but expressly upheld the right of the courts to disregard such a provision if the best interests of the child would be better served another way.

Again, in the case of *Ferguson*, the courts admitted the supremacy of the father's right to custody, but held the father an unfit person and awarded the child to its maternal grandparents.

Still, it must be recognized that in the light of our present approach to this problem of custody, the mother was in a decidedly unfavorable situation having only the most limited of rights to her children.

Further, it was definitely stated in the *Brandon* case that even if the mother and father of an illegitimate child married, the father had sole rights of custody, but the child had no legal claim in the father's estate, nor could the mother appoint a guardian in her will even though the father could.

The weight of public opinion against the injustice of these laws finally brought about a complete statutory revision of the Common Law.

SEDUCTION IN 1837

It is not possible to point to any specific enactment as marking the birth of an aroused public concern for human dignity before the law in the field of public welfare.

In the Seduction Act of 1837, however, the germ of our modern legislation concerning the care of illegitimate children can clearly be seen.

This statute provided that the father, or if he were dead, the mother, of an unmarried seduced female, might bring an action against the man if the female was living under his roof or, if not living with him, was living somewhere else for hire.

An act of service did not need to be proved; it was now to be assumed by the courts.

Where the parents of a seduced female had deserted prior to the seduction, then another person able at Common Law might maintain the action.

This act further stated that where the parents were not living within the Province of Upper Canada at the time of the act or at the time of the birth of a child following from the seduction, any master or relative able at Common Law to maintain the action might still do so.

PUTATIVE FATHERS

Any person supplying food, lodging, clothing and other necessities was allowed to bring an action against the father of the child, provided that the father was not living with and supporting the child.

If the mother herself brought the action for maintenance, her statements as to paternity had to be corroborated by some other evidence.

It was also necessary that she swear an affidavit of paternity within six months after the birth of the child, or her action would be barred.

The act concluded by saying that the statute did not bar any other action which might have been taken at Common Law.

At first glance, this act may not appear unduly significant except that it provides a cause of action against a putative father. However, when analyzed, the statute produces a wealth of information concerning government attitude toward the two problems of *seduction* and *illegitimacy*.

It is important to remember that at Common Law a parent was only allowed to sue in this respect if he could prove a hiring or a service relationship between the girl and himself.

In other words, the courts of Common Law were willing to protect a master's rights in regard to wrongs or injustices against his servant if these caused the master some personal loss.

(The courts have always recognized their duty to protect the person, his property and his civil rights, but it is the opinion of many that they often lagged behind the accepted community attitude as to what rights were so fundamental to a person that the protection of the courts was warranted. Furthermore, in any sexual offence, it is assumed the function of the courts was not expressly to punish because of the sexual nature of the offence but rather to protect the community's interest in its citizens, against this outrage.)

What then, is the significance of the act in the light of these fundamental principles?

The recognition by the legislature that the Common Law should be protecting the interests of the parents, as parents, in their children is fundamental.

This statute says, in effect, that the courts, through legislation, now recognizes the indignity to parents resulting from the seduction of a daughter. It abolishes the master-servant relationship formerly necessary and states clearly that the courts are to imply this relationship, whether it, in fact, exists.

In other words, this legislation declares that the interest of parents in their children is more than mere loss of service with accompanying financial loss. It is in *human terms* and, as such, is to be protected.

The courts should, therefore, employ the familiar *legal fiction* that this financial relationship exists.

GOVERNMENT AND HUMAN RIGHTS

It seems clear now that as early as 1837, the Government was beginning to take an active interest in human rights.

This conclusion is further strengthened by an examination of two other sections of the act.

The very first section gives a mother whose husband is not living the right to sue for damage to herself for an offence against her daughter. (At Common Law, a woman had very few civil rights in matters of property and finance.)

This act contained a small but important emancipation of women. In addition, it would appear that the rights of a child have been recognized, perhaps in two different ways.

The parents were enabled to sue for the injury against their child, and at the same time, the parent in turn could bring suit on behalf of the grandchild born as a result of the seduction.

(It might properly be asked at this point if the legislature was not again saying, admittedly in a guarded manner, that an infant born out of wedlock, even though he has almost no other rights at law, at least has a right to be supported by his father?)

When considered in this light, it could be submitted that the Seduction Act of 1837 may be regarded as the first manifestation of the recognition of *human rights* in the field of human welfare.

AMENDMENTS AND CRITICISM

The act was subsequently amended when the Illegitimate Children's Act was passed and the sections of the Seduction Act pertaining to aid from the putative father were repealed.

The Seduction Act is still law and can be found in the Revised Statutes of Ontario. The last important amendment in 1909 gave it its modern form and empowered a guardian, or anyone standing *in loco parentis* to the female, to sue whether or not a master-servant relationship exists.

Dymond suggests that the benefits the act attempted to confer were seriously impeded by its requirement that the girl had to swear an affidavit within 6 months.

He states that under the old act the affidavit required was seldom filed.

The mother, being ignorant of her rights and of the provisions of the law, could easily be persuaded to postpone any action beyond the time set for filing the affidavit. Without the sworn statement no action could be taken. However, even with this serious limitation the act may still be regarded as progressive in its provisions for its time.

At this point, there are four acts worthy of some mention as they do indirectly benefit children.

1812 PENSIONS FOR WIDOWS

First of these is the Military Pensions Act, which was passed to provide an annual payment to the widows and children of soldiers killed in the War of 1812.

(The act was later amended to include those widows whose husbands had died in captivity and to allow a pension for serious wounds received in the war.

In 1840 the Government again amended the Pensions Act, stating in the preamble that because of many fraudulent claims, a board was to be appointed to examine all further claims and to decide on their validity.)

The Public Health Act of 1835 was passed to protect the public against contagious and infectious diseases and provided for the appointment of three or more persons in every town to act as health officials and to inspect uninhabitable houses and boats arriving from other countries, with power to have them sterilized.

The act also provided for a fine up to £20 for failure to follow orders given by the health officials. Effective for only one year, the term was extended by successive legislatures and finally made permanent in 1840.

IMMIGRANTS AND INSANE

In 1830 the legislature voted £100 for the support of sick and destitute immigrants who were being treated in the old legislative buildings at York, and in the same year enacted a statute providing that the destitute insane were to be cared for in the jails and a small per diem rate paid for them.

Then, due to pressure from social reformers and the report of a commission of inquiry, an asylum for the care of the insane and lunatics was established at York.

The act provided that the Lieutenant-Governor-in-Council was to tax through the province $\frac{1}{8}$ penny on the pound assessment to build and maintain a hospital and to appoint a board of 12 to govern it. Persons had to be certified by three doctors before being admitted.

PROVINCIAL GRANTS BEGIN

While government was beginning to pass social legislation the communities themselves began to organize to help the less fortunate.

In 1840 the House of Industry at Toronto, a private enterprise begun 10 years before for the care of the sick and destitute poor of the community, was granted £350 by the legislature as an aid to carrying on its work.

For the times this was a large amount.

During the same period, many acts were passed granting aid to private enterprises of this nature as well as relief to private citizens, most of whom were retired civic employees in need of financial assistance.

In this way, these civil servants were rewarded for their years of public service and provided with a small measure of security through personal pensions.

THE FIRST HALF CENTURY

During these first 49 years the society of Upper Canada experienced a complete evolution.

The dynamic forces at work within the social structure were certain to play no small part in the legislation which was enacted.

Before leaving this period some attention should be given to the work of S. D. Clark—*The Social Development of Canada*.

Mr. Clark, a sociologist, describes at length the early period of pioneer life, the beginning of urbanization, and the resultant rise of alcoholism and insanity in the towns.

He portrays the early pioneers as rough, ambitious and independent.

They did not fall prey to social disease or other emotional illnesses and thereby had little need of government assistance. As towns developed and schools grew, new social distinctions evolved and the gulf between urban and rural inhabitants widened.

Coupled with this, Canada's flourishing timber trade attracted a second wave of settlers. These came as individual families, not in groups, and lacked the group strengths characteristic of the earlier settlers.

Many failed miserably in their attempts to adjust, and the exigencies of frontier life forced a swelling tide of drunks and vagrants into the towns which contained no welfare institutions capable of helping them. From 1814 onward, according to Mr. Clark, this tide grew to alarming proportions until the jails were overflowing and penitentiaries became necessary.

From this it can be seen why the initial part of this first era was practically devoid of social legislation, and why the last 10 years, from 1830 to 1840, brought a gradual awakening of the government to the needs of social reform:

The Welfare of Children in the Period 1840 to 1867

From 1840 to 1867, the further development of the principle of public responsibility expressed itself in the growing volume of new legislation, attempting to alleviate the distress of the less fortunate persons who were in need of assistance or protection.

In this short span of 27 years were born two major items of legislation which probably affected the history of Canada more profoundly than any other legislation in any other comparable period.

The first of these is the Municipal Act passed in 1849 which gave self-government to the towns, villages and townships of the Province of Canada and which is now considered as the cornerstone of democracy in Canada. This system, followed by the succeeding provinces, provided for almost complete uniformity across the Dominion as to the principle of municipal government.

Secondly, the British North America Act, passed by the Imperial Parliament, granted Canada the right to her own parliament, and to be regarded henceforth as an independent nation.

Less dramatic perhaps than these two statutes, yet significant in many lives, legislation for the needs of the people continued.

APPRENTICES AND MINORS

An amendment in 1851 to the laws of Apprentices and Minors marked the beginning of the welfare legislation of this period.

This legislation was designed to make better provision for children than did the old Orphan's Act.

The act provided that any parent, guardian, or any other person having care or charge of any minor not under 14 with the consent of such minor, could bind the minor by written indenture for any term not to extend beyond his majority.

Any city or incorporated town could bind any minor whose parent was in jail, or in a House of Correction, or who was dependent upon any public charity.

Every master was to provide suitable board, lodging and clothing, and to teach the child his trade. Every apprentice was required to faithfully serve his master and not to absent himself from his service either day or night without the consent of the master.

The act allowed an apprentice to bring action against the master for mistreatment, and the master also had a right of suit against the apprentice for disobedience or idleness. Any minor over 16 could verbally or expressly enter into service under the same conditions by his own initiative if he had no parents or guardian.

Although harsh because of the long hours the minor had to serve, the statute provided some relief as the minor was enabled to appeal to the courts if mistreated.

It was doubtful, however, if many apprentices knew of such a provision in the act and how to utilize the act to their advantage.

The act was progressive in one respect; it allowed a minor over 16 to contract with a tradesman voluntarily. Thus, it seemed theoretically possible for an older boy, who had found himself destitute and homeless, to enter an apprenticeship and thereby provide for himself.

At the same time, the towns and cities received some protection from the necessity of providing for destitute children by having the power to bind these minors as apprentices.

CUSTODY OF INFANTS

The Custody of Infants Act amended the laws of guardianship and custody and expanded the legal status of women.

The act began by stating that it was desirable to permit the Superior Courts of law and equity to award custody to the mother in special circumstances. The courts were then granted the power to award custody of the child to the mother if she made an application.

If the father had sole guardianship of the child and if the child was under 12 years of age, and the court was convinced that the circumstances were such that it was better for the child to be with the mother, (or if the father was dead), then the child might be returned to its mother, and the father ordered to contribute to its support.

If the child was over 12, the court might order that the mother be permitted to see the child at such times and under such conditions as the court deemed suitable. The courts were further granted the power to call and force the attendance of any witnesses.

Adultery by the mother barred all her rights to the child.

Thus, for the second time, statute law by amending common law, recognized the mother's interest in her children. Here was government recognition of the importance of these actions affecting children by giving them the dignity and benefits accruing from the Superior Courts of the province.

The act greatly increased the rights of the mother.

First, the period of nurture was practically doubled, from 7 to 12 years. During this period the mother had a prior claim to her child.

Secondly, the father was now forced to support his child, and this maintenance might be awarded in the same action, enabling the dispute to be adjudicated in one action.

More important, however, was the acceptance by the state of the policy that a child needs his mother and has a right to be maintained by the father.

At the same time, while the mother's rights were extended, the father's were correspondingly decreased. The man shared his rights and had to accept the responsibility that came with children.

It is important to note here that within a space of 28 years, from the passing of the first Guardianship Act, that the mother's rights have developed from relative insignificance to partial equality with the father's.

Not many more years were to pass before the mother was recognized as having equal rights to her children.

JUVENILE DELINQUENTS

In 1857 juvenile delinquency became a concern with an early recognition by government that younger offenders required special treatment.

The first statute known as the Act to Provide Gaols for Young Offenders, passed in 1857, was designed to attempt the reformation of male and female offenders under 21.

First, the act provided for the establishment of a building in Upper Canada. Offenders under 21 who were sentenced to more than 6 months but less than 5 years were sent to this reformatory instead of the penitentiary.

This statute made progressive recommendation that any offender under 16 who was being sentenced to at least 14 days in jail could be further committed for 6 months to 2 years in the reformatory.

This was only done when the court felt that in regard to all the circumstances, the child would be benefited by the longer sentence and the time spent in the reformatory, rather than in a county jail.

There was no definite provision that the child had to remain his whole term. If he was felt to be making suitable progress, he could be released from the reformatory before the 2 years had been served.

Juveniles serving sentences in the penitentiary were to be transferred to the reformatory. Land was to be purchased to provide for a farm in order that the boys could learn farming skills, and the produce used by the school. It was also suggested that an old hulk could be purchased so that boys desiring to learn the art of sailing might be instructed in the ways of the sea.

Five inspectors were appointed to inspect the reformatory from time to time and to report to the Governor General their opinions of the cleanliness and treatment afforded the inmates and the achievements of the institution.

The inspectors were required to inspect all other hospitals, asylums, jails and penitentiaries in an attempt to raise the standards of all institutions.

All jails were to be built according to specifications which provided for their proper ventilation, warmth, dryness and an exercising yard. They were also to safely confine the offenders without violence.

GRANTS IN AID

County officials were empowered to levy taxes to raise the standard of their jails to the level specified by the statute and the inspectors.

The government offered to share the cost of renovation and erection of new jails. The province paid 50% up to £1,500 for the new buildings if the county raised the rest.

Here, then, is the beginning of the system of grants-in-aid entering the welfare field. Not unknown at this time, it is still worthy of mention that the legislation provided for compulsory taxation to pay for a welfare program.

Private institutions were also subject to this surveillance in order to provide a comprehensive standard.

There is in this statute no limiting provisos such as those that so crippled the benefits of the Seduction Act of 1837.

Here, the state has accepted responsibility for the humane treatment of the mentally incompetent and the offender. It was an attempt at a sweeping system of reform, with a program designed to ensure suitable standards.

Unfortunately, the benefits were lost by the failure to expand the department in conjunction with the growth in the number of organizations.

Within 70 years, the Ross report was to show that three inspectors were attempting to supervise over 400 institutions. The failure of many of the institutions to do the task which had been assigned them could be directly attributed to this fact.

This statute was immediately followed by the Juvenile Offenders' Act intended to mete swift justice to boys under 16.

If restitution was made in a case of petty larceny the charge would be dismissed, or the complainant could withdraw the charge and the case would again be dismissed.

The offences were to be heard summarily before two Justices of the Peace who had the power to sentence the offender to 3 months of hard labour in a House of Correction or to a fine.

If the charge was not proved, the case had to be dismissed, and could not be heard again before a higher tribunal.

JUVENILE CODE

These two acts are probably the basis for the present Juvenile Code, as they constitute the first attempt by legislation to treat the youthful offender, instead of deterring by punishment.

It is certainly the first recognition that there is a difference between the juvenile delinquent and the adult criminal. That such recognition came as early as 1857 is to the credit of the legislature and the citizens interested in the plight of children.

This approach might be attributed to the efforts of several private organizations attempting to aid the homeless waifs at large in the cities and towns. The plight of these youngsters and the efforts of the organizations were known to the legislature several years before 1857, and no doubt influenced considerably the legislation concerning them.

PARENT PROTECTION

Within the scope of these major pieces of legislation lie some exceedingly important statutes which affect child welfare indirectly, but at the same time, quite profoundly.

First of all, in 1841 the new Province of Canada passed three small acts which were later incorporated into the Consolidated Statutes of the Province of Canada 1859. These were enacted to deter persons likely to commit crime.

The acts made it a criminal offence to carnally know a girl under 10 years of age, the penalty being death;

The crime of abortion by any means, carried a sentence of 2 years to life;

The abduction of a female under 16 against the will of her parents was a misdemeanour punishable by a fine and a jail term.

A fourth act in the same year made it an offence to entice or decoy a child under 10 away from his parents or guardian with intent to deprive the parents of their child.

Anyone not claiming to be the father of an illegitimate child, and without a comparable personal relationship, was guilty of an offence if he took the child away from the mother.

Again, we find the rights of an unmarried mother being affirmed and expanded.

Further, a new criminal law was created to protect the interests of parents, apparently an interest now deemed worthy of protection.

While not welfare legislation or even civil law, it was an altering of criminal common law to keep in harmony with progressive public opinion.

INFANTS' ESTATES

The Infants' Real Estate Act of 1849 permitted an application to the court for permission to sell, or deal with in other ways, the real estate of an infant where the court felt it was equitable and profitable for the infant, to dispose of all or part of the land. The court made a careful scrutiny of these cases, and often ordered a report from time to time.

CHARITABLE INSTITUTIONS

A very important statute, previously referred to, is the *Charitable Institutions Act*.

The legislation provided for philanthropic and charitable societies to be incorporated with the power to sue and to be sued, to contract, and to hold real and personal property. The preamble to the act clearly outlines the reason for its enactment —

“Whereas large and increasing numbers of societies have associated themselves together for the purpose of providing against sickness, misfortune and death and for the relief of orphans and widows of deceased persons and owing to the absence of legal protection the funds have been subjected to great and serious losses”

The act then provided for each society to have a corporate seal, and to become a legal entity.

Many societies immediately availed themselves of the opportunity. Among the first were the Orphans' Home and Female Aid Society of Toronto and the House of Industry for Boys.

A rush commenced and by the early 1860's literally dozens of societies for the care of orphans, the sick, the aged, blind and destitute had been formed and incorporated throughout what is now Ontario.

It is obvious that the large numbers of societies and their concern for the individual must have impressed the legislature and helped formulate the legislation which so changed the whole approach to social reform.

The Municipal Act which gave municipalities the power to establish almshouses for the poor and destitute indigents, to make bylaws regulating the cruelty to animals, and the selling of liquor to minors must have had an effect on the community attitudes also.

This period is primarily noted for the number of private agencies which were incorporated and functioning throughout Ontario by 1867.

Even if the legislation was not all that could be desired, the tremendous growth of private agencies vividly portrays the deep concern that private citizens were feeling over the plight of their fellow men and children. It must have been a gratifying spur to the agencies to be officially recognized and endowed with legal powers. No one can estimate the effect of such action.

The agencies, truly receiving the recognition they deserved, must have of necessity pushed forward their various enterprises. Certain it is, that the third period from 1867 to 1893 was one of the most fruitful in the history of social welfare legislation, much of it resulting at the instance of welfare agencies of the province.

The Welfare of Children in the Period 1867 to 1893

The period covered by these 26 years is as important to women and children and social welfare generally, as the previous period was important to Canada as a nation.

Within this span we have the introduction of compulsory education, regulation of the hours of work, women given freedom to hold property, and the rise of new and better social agencies.

The era commenced with the amending in 1874 of the Apprentices and Minors Act.

By these amendments a minor might be bound by either of the parents or guardian, or a charitable organization, but the consent of the child was required if he was over 12 in the case of boys, and over 14 if a girl.

EMPLOYER LIKE PARENT

The person who accepted the apprentice was to be held in the same position as the child's original parents, and was charged with treating the child in a similar fashion.

The parents were liable to legal action if the guardian failed to discharge this duty; the assumption probably being that they should have exercised reasonable care in the selection of a guardian or employer.

If the father abandoned the mother, she was given power to bind the child, which was some slight expansion of her rights as a parent.

An important addition was *Section 7* which stated that no minor who had been abandoned by his parents or guardian, and who was being cared for by a private citizen or charitable organization, could be reclaimed by such parent or guardian if the court felt it was for the benefit of the child to be left with the society or private person.

A few years earlier such a section would have been considered a blasphemy.

The father, with power of life and death over his family, was now gradually losing his exalted position, first in favour of the mother, and then for the best interests of the child. Courts had been charged with the duty of deciding whether a child's interests would be better served with his family or by separation, the father's rights suffering a corresponding encroachment.

All wages received for the minor were made payable to him or to a responsible person for his benefit, instead of being given to the family.

The minor was allowed to apply to the courts to alter the mode of payment to a method suitable to himself and probably satisfactory to the court, or to have his indenture cancelled for wrongs of the master.

Guardians, likewise, could be removed for misconduct.

Thus, the legislature placed more emphasis on the protection of the minor rather than the granting of absolute rights of the parents or master as was done under the earlier act.

A parent might move to have the indenture rescinded if the child was unkindly treated, and the right of appeal to the Supreme Court in Chambers against any indenture was granted.

This section giving the parents a right to break the indenture was more realistic than the granting of the right to the minor himself.

True, as long as the section remained, it was some help to a child but, it is doubtful if many children knew enough about it to avail themselves of its protection.

It would have probably been of far greater use to adults than to children to have this section incorporated into the statute and thus indirectly, more advantageous to the child.

Three years later, the Guardianship Act was also amended with sweeping changes comparable to their effect to the amendments just discussed.

The statute now fully recognized the mother's rights to her child and permitted the mother to be appointed guardian even if it was contrary to the father's will, if the best interests of the child would be served.

The Court of Chancery was given the jurisdiction to set aside an appointment if the court felt any other arrangement would be more suitable. The father's religion was still dominant as under Common Law and must be followed by the courts.

Even where a parent was not granted custody of the child, the courts could insist upon its being brought up in the religion in which the parent had a legal right to require the child to be brought up.

INFANTS' ACT

This act, in 1887, clarified, amended and consolidated under the one title, many of the former acts regarding infants.

It combined the Custody of Infants' Act with the Infants' Real Estate Act and the Appointment of Guardians Act.

The former were repealed, leaving the *Infants' Act* which is still in force today.

The court was now empowered to give a mother custody of her child or access to her child depending on the circumstances as outlined in the *Custody Act*, or to grant either or both parents access to the child where a guardian has been appointed.

The mother was barred from these rights if she had committed adultery.

The father could now be required to pay maintenance if he had deserted the family, or was not living with his wife and child.

The law in regard to the infant's real estate remained substantially the same as before, with the consent of the infant necessary before any action affecting his land could be taken, if he had attained 14 years of age.

The court was also empowered to appoint a guardian for a child.

The father could be appointed guardian by the court, or with the father's consent, another person could be appointed to act solely or jointly with the father.

If the infant was 14 or over, no such order could be made without his consent. If no guardian was appointed, the courts could appoint one for a child whose parents were unable or unfit to care for him, or the child could apply to the court to appoint one.

The guardian was now required to post bonds to guarantee his honest performance of the trust vested in him, and was required to render an accounting of the funds and properties of the child's estate to the court.

The mother, on the death of the father, was to be the guardian either alone, or if the father had appointed one, jointly.

She was also able to appoint a guardian on her death or *inter vivos*, and if the father appointed a guardian as well, they now acted jointly, the father's appointment no longer having precedence.

The mother could appoint a guardian to act jointly with the father and, if the father was found to be unfit, to act alone.

Thus, this act did in fact raise the mother's status to complete equality with the father. Although some courts found difficulty with the application and interpretation of the act, it would seem that the best interests of the child were usually well guarded.

Because of this difficulty some real or imaginary injustices were felt to have arisen between father and mother, causing the legislature to redraft the whole act in 1923.

The redraft was substantially the same as the original act but clearly declared that the father and mother were to be regarded as joint guardians. The right to sole guardianship accrued in the survivor.

The act stands today in much the same form, a credit to the farsightedness of the legislators of 1887.

A guardian so appointed has complete authority to act for or on behalf of the infant in any court action or any legal transaction, and has full charge of the infant's real and personal property subject to the court's supervision as indicated above. He may bind the infant as an apprentice with the court's consent or, if the infant be over 14, his consent is sufficient.

The act affirms the father's right to name the child's religion, unless by his action or conduct it can be inferred that he has waived this right.

MARRIED WOMEN'S PROPERTY RIGHTS.

The Infants' Act incorporates the three old acts and successfully places the parents upon equal footing in dealing with their children.

This act fitted harmoniously with the Married Women's Property Act of 1886 which provided for the proprietary emancipation of women.

Thus, in 2 years women gained legal equality with men in regard to their finances and their children.

The Infants' Act clearly is an effort by the legislature to safeguard the interests of children and to ensure them a decent moral and physical environment whether with their parents or people chosen by both their parents.

PROTECTION OF INFANTS

The alarming growth of illegitimacy and prostitution caused a similar shocking rise in the number of infants being left, deserted or farmed out to nursing homes.

The situation was recognized by the legislature in 1887 and remedial steps taken. The Protection of Infants' Act passed that year attempted to do away with the evils of the private nursing home by forcing them to be licensed and inspected.

No infant was to be kept in such a home for more than 24 hours if he was kept there apart from his parents for a monetary consideration.

The municipalities were to register the houses and to refuse a license if the house was deemed unsuitable. A licensed home was required to keep a register of the age, name, sex and address of all infants boarded, and of the people bringing children to and removing them from the house.

If a house became unfit, or any child was neglected or ill-treated in the home, it was to be removed by the council of the municipality in which the home was situated.

The council was charged with the duty of inspecting these premises and with the costs of all trials taken under the act.

If a child died, the owner was to notify the coroner within 24 hours and an inquest was to be held unless a doctor certified that the death of the child occurred from natural causes.

AMENDMENTS Re Boarding Homes

This act was repealed in 1897, and the second one owing to many deficiencies was replaced by The Maternity Boarding Houses Act, 1912.

This later act was not dependent upon the passing of bylaws by councils and provided for the keeping of a register by the medical officer of health, and registration of maternity boarding homes and infant boarding homes.

The medical officer must inspect the premises and make certain that they are suitable for the lodging of young girls and infants.

The helper of the house was required to have all births attended by a qualified doctor, and to see that these were registered under the *Vital Statistics Act*.

It was found at the turn of the century that too many of these places were being used for illegal operations and the disposal of infants for rewards.

Under this act the medical officer of health was removed from any control of the municipality and able to stamp out such abuses by his own initiative. The Children's Aid Societies also played an important role in eliminating these practices.

Thus, the legislation had resulted in practically the complete disappearance of the abuses against which it was directed.

Although altered somewhat in the past 40 years, this act is still primarily the same as when first passed in 1912. Since the act has remained so nearly identical to the first one, it should not be necessary to deal further with it.

Here is another indication of the ability of the early legislators to foresee and co-ordinate the activity of various municipal agencies and to achieve truly desirable results.

HOUSES OF INDUSTRY

In 1837, Houses of Industry were founded in Ontario. Several were established in Toronto and began caring for children who were destitute, orphans, or whose parents were unfit to care for them.

Between 1837 and 1875, 842 children were cared for in the Toronto homes, 552 of these having been placed in homes throughout the country.

1859 saw the founding experimentally, of the Boys' Home in Toronto.

It was established to care for some of the alarmingly large numbers of boys found wandering the streets and committing serious juvenile crimes.

Many of these boys had been deserted by their parents or the parents were in jail. It was difficult to obtain the boys legally because few had parents who could or would consent to this program, and none of the magistrates had power to remove the children from their homes. Despite these difficulties, within 2 years, the home was caring for 103 boys.

HUMANE SOCIETY

A third community resource was the *Humane Society of Toronto*, founded in 1877, but which failed for want of leadership and community interest.

It was reborn in 1887, dedicated to the prevention of cruelty to children and animals.

The society hired a fulltime officer, a trained policeman, who genuinely believed in the society's work and who was loudly praised in the society's annual reports. It was reported that between 1888 and 1891, this officer dealt with 3,100 children and adults, and recovered enough from fines to pay his salary.

NEGLECTED CHILDREN

With these three large agencies were several others, all trying to protect or reform.

The notoriety caused by the number of agencies publicizing their work caused the legislature to attempt remedial legislation.

One of these acts, the *Protection of Neglected Children's Act* enabled the magistrates to order the removal of children from their homes when necessary for their welfare. The act states—

“Where proof that a child under 14 by reason of neglect, crime, drunkenness, or other vices of its parents or from orphanage or any cause was growing up to circumstances exposing such a child to a harmful, idle or dissolute life, or on proof that such child being an orphan was found begging, a judge may order him to any Industrial School or refuge to be kept and cared for and educated for a period not exceeding his 18th birthday.”

Any child apparently under 16, found in the company of thieves or prostitutes might be removed; the parents to be served with notice of the application and to show cause why the child should not be removed.

The municipality of residence was to be liable up to \$2 a week for the child's maintenance, the decision of the court as to residence being deemed sufficient. Persons under 21 were to be tried separately from adults whenever possible.

Obviously the act attempted to meet the requirements for which the agencies were pressing. It defined the type of child to be protected and the method to be used

However, it contained one serious and crippling defect. It did not establish the machinery necessary to carry out its intentions.

However, in this act is the foundation for the Children's Protection Act which was to follow in 5 years; the difference between the two being that in the later act the machinery was provided.

Although the act apparently was not generally known or else was considered too narrow and restricting by the societies, it was a beginning and displayed a willingness on the part of government to provide protective legislation.

THE TENDER YEARS

The last primary piece of legislation is the *Commitment of Persons of Tender Years Act* which is another indication of the recognition that children needed special care and treatment and could not humanely be classified with adults.

The statute made a real distinction between youthful offenders and older citizens.

By its laws, no boy could be committed to the Ontario Reformatory for Boys, but could be committed to an Industrial School.

They were kept in the Industrial Schools until ready for probation, discharge or until 17, then if still incorrigible were transferred to reformatory or penitentiary. Maintenance was to be charged and paid as provided under the *Industrial Schools Act*.

POT POURRI

Besides these primary statutes, there are numerous other statutes and amendments which deal with human rights.

There had been on the books, a statute passed in 1874 entitled *Compensation to Families for Death of Persons Killed by Accident, Neglect or Default Act* which provided that the mother could bring suit for the death of her husband contrary to the old Common Law which maintains that *death could not be complained of . . .*

The amendments stated that the representative of the estate was to bring the action on behalf of the family within 6 months or their heirs might do so themselves.

This act has now become the *Fatal Accidents Act* and is a further demonstration that the legislative interest was not confined to merely one area.

The *Insurance Act* was also amended to permit a parent to insure his life and apportion the benefits from the policy anyway he saw fit; if no apportionment was made, his immediate family received equal shares.

This act is in the same category as the Fatal Accidents Act, and while not really a part of welfare, it is worth mentioning as still another faggot in the growing pile of legislation pertaining to the protection of the individual and the family.

HOSPITAL FOR DRUNKS

The Hospital for Drunkards Act, passed in 1874, clearly shows in its preamble the worry caused by the alarming growth of alcoholism in the cities and towns of Ontario. The statute begins—

“Whereas the prevalence and the increase of drunkenness is directly causing the ruin of many persons addicted to the vice, and of their families, as well as inflicting grievous injury to their relatives and society in general . . . and whereas it is clearly shown, drunkenness is, directly or indirectly the cause of much disease and insanity and idiocy, and whereas it is known that the plan of treating drunkenness as a disease in hospitals especially established for that purpose has produced beneficial results”

Clearly, the statute was an attempt to protect both family and society from the problems of alcoholism. Both adults and infants were admitted to a hospital voluntarily.

Under Section 21, they were confined to the hospital by a court order after proof by relatives or friends that they were alcoholics and that their illness adversely affected their families. If admitted voluntarily by Section 13, they had to pay their own costs; if admitted by court order, their parents or guardians, or relatives had to pay.

THE RISE OF FOSTER HOMES

In 1874 the *Industrial Schools Act* was passed, providing that a school in which industrial training was taught and in which children were lodged, clothed and fed should be deemed an Industrial School.

The buildings were to be allocated by the Public School Boards, or Separate School Trustees and inspected by the Public School Inspectors and, if satisfactory, could be licensed.

Any child under 14 might be brought before a magistrate by any person where such child was found begging or receiving alms, found wandering in the streets and had no settled place of abode, who was found deserted or whose parents were in jail, whose parents or guardians claimed they were unable to control the child or who, owing to the vice of the parents, was growing up without salutary parental control.

Upon hearing the evidence the magistrate could send the boy to any Industrial School for any period of time providing he was not over 16. Roman Catholics were to be placed in separate institutions if possible, and clergymen of all faiths had permission to visit and give religious instruction.

Provision was made for foster home placement or return to parents when the child was considered ready.

Often these parents had to post a bond to ensure their good conduct and decent care of the child.

The school was empowered to collect maintenance from the municipality in which the child had one year's residence other than at the Industrial School. The magistrate also had power to assess the parents up to \$1 a week maintenance for the child.

Coming as it did, early in this area, the act was a strong indication that society was, at this point, deeply concerned over the Juvenile Delinquent. The reasons for his delinquency seemed to be understood as stemming from the vices of his parents.

It was recognized also, that the child would probably be better removed from their influence.

There was, however, a serious lag in the recognition of punishment versus treatment in Canada.

The effects of this lag were most clearly seen in Juvenile Delinquency where the public generally failed to advance its thinking fast enough to offset the loss of wholesome recreation lost to youth by the great shift from a rural to an urban society.

Children devised street games and then formed gangs which led to crime. Then the failure to distinguish between Juvenile Delinquency and adult crime exposed the youths to the harsh punishment accorded to adults.

After 1860 there grew an acceptance of the desirability of classifying prisoners, but still little was done to reform them.

ATTEMPT AT REFORM

The Industrial Schools Act in 1874 is a beginning then, to separate the youth from the adult, to attempt reform by a change of environment, and hence a first progressive step toward treatment, not punishment.

There then followed in rapid succession a stream of legislation designed to protect the child, and to strengthen the family structure.

The Billiards Room Act, the Truancy Act, and the Sale of Tobacco Act, all were aimed at keeping the child away from immoral influences in the community.

The owners of pool rooms were not allowed to have any child under 16, later changed to 18, on the premises.

The Tobacco Act prohibited the sale of cigarettes or cigars or any tobacco to minors under 18, except for the purpose of filling a written order from a parent or guardian.

The Truancy Act was a natural outgrowth of the statute regulating factory hours coupled with a desire to provide educational opportunities for children. This act, later to become the Compulsory School Attendance Act, made it mandatory for all children between 8 and 14 to attend school, the parents being liable to a fine for failure to send the child.

CHILDREN IN FACTORIES

The Factory Act and Regulations of Shops Act, were also landmarks in the protection of children from the inhumanity of man.

The province in 1882 established a commission to inspect the conditions of children in factories.

The commissioners reported terrible overcrowding, poor ventilation, complete inadequacy of sanitary equipment, and a callous disregard for human welfare on the part of the factory owners.

They further reported an extensive number of children employed, some as young as 8 and 9. The employers kept no record of these children, and when questioned by the commissioners, very few of the children even knew their own ages.

As a result of the hiring of children, who thereby received no education, there were large numbers of adults growing up unable to read or write.

A natural result of this investigation was the Factory Act, stating no boy under 12 and no girl under 14 could be hired to work. None was permitted to work among the machinery and hours were to be a maximum of 10 a day and 60 a week.

The factories were to be governmentally inspected for their fitness of working conditions and their sanitary provisions. They had to be ventilated and generally adequate for human habitation.

The Regulation of Shops Act followed in three years. It stated that no boy under 14 and no girl under 16 could be worked more than 74 hours a week in a shop, including meal hours.

One hour was to be given for the noon meal and $\frac{3}{4}$ of an hour for supper.

A maximum of 14 hours on Saturday was established at the request of 75% of the shop owners.

The municipalities could pass a bylaw ordering all stores to be closed in the evening not earlier than 7 p.m. If women were working, the shop had to provide chairs for them to sit on when not busy.

Although these acts may not seem overly benevolent by present day standards, they were the first of their kind and were a new departure for government.

It is necessary to judge them by the standards of that period which probably considered such legislation as quite radical.

The acts were amended several times in the next few years, providing for gradually shorter hours of work, and raising the age levels of children to 16 in both cases.

In 1913 the Factory and Shops Acts were consolidated into the Factory, Shops and Office Building Act, with special sections pertaining to Bake Shops and Barber Shops which did not fit into either definition.

The act is now incorporated into the Revised Statutes of Ontario, 1950, in substantially the same form as passed in 1913.

The hours of work and general conditions required of the buildings are almost identical. Of course, these times are maximums and are reducible at will by the employer, or by agreements with employees.

FAMILY SOLIDARITY

In addition to this protective type of legislation, there were several acts designed to strengthen family solidarity.

Into this division falls the Married Women's Property Act, giving the wife full rights to hold property in her own name and to will it or dispose of it as she wished.

The Insurance Act, already mentioned, and the Married Women's Act complete the legislation of this type.

The Married Women's Act made it possible for a woman deserted by her husband to have him brought before a magistrate who assessed the man's ability to provide for his wife, with power to order him to pay up to \$5 a week for her support.

If the husband still refused to support his wife, he was subject to having his goods distrained.

He was not liable if the wife had committed adultery, unless he was shown to have condoned her action.

All cases were to be tried "in camera," and the evidence taken could not be used in any other actions.

If the circumstances of either person changed, the case could be reviewed and the order varied.

The last of the legislation was the Juvenile Offenders Act which provided that any juvenile actually or apparently under 13 sentenced to jail or in a jail or penitentiary could be transferred to one of the Industrial Schools.

The maintenance was to be the same as if already sentenced under the Industrial Schools Act.

The Municipal Act was amended in 1887 to enable municipalities wishing to establish an Industrial Farm to purchase land for this purpose, and to establish Houses of Industry and buildings for the care of drunkards. The municipalities could also pass bylaws for the aid of the blind, aged, insane and destitute.

VOLUMES OF LEGISLATION

During the 26 years between 1867 and 1893, an average of one act a year was passed, either a new act or amendments to the old ones.

Legislation of this kind needs no special justification on economic grounds for it is a case of the state assisting in the maintenance and education of the children, and the preservation of the family, which are its greatest assets.

In all, 14 new statutes were enacted during this period, beginning with the *Hospital for Drunkards Act*, an attempt at treatment, progressing through several protective acts, such as the *Factory Act*, or the *Shops Act*, and terminating with the *Juvenile Offenders Act*, another attempt at treatment of the individual, instead of the usual punishment and resultant rejection by society.

In this era, women and children were discovered as being individuals with rights and needs worthy of protection by law.

Women were legally emancipated to a degree that must have been truly startling to many men.

CHILDREN AS ASSETS

Children were accepted as individuals with feelings, rather than as chattels. The state saw them as assets and passed much of the protective legislation on their behalf.

A moralistic trend had crept in, and people and government were desperately passing legislation in an attempt to compensate for their years of indifference.

It was this awakening which probably provided the momentum that carried the passing of the *Children's Protection Act of 1893*, and precipitated Ontario into the 20th century, now termed the *Children's Century*.

The Welfare of Children in the Period Commencing in 1893

The passing of the Children's Protection Act in 1893 ushered in the era of modern social welfare legislation.

The plan of the original act which, despite numerous revisions and amendments has never been changed, adopted the principle of encouraging local effort to aid in the work while providing for a central office to advise and direct it.

This central office was also to provide direct assistance where, owing to sparse settlement, it would be impossible to carry out the work any other way.

CHILD DEFINED

A child, under the act, was a boy under 14 and a girl under 16.

If no proof of age was available, and no evidence given to the contrary, the child was to be presumed to be the specified age.

Although this presumption of age may appear strange, it was thought to be a wise and necessary section.

In these days most people are so conditioned to the accurate registration of births under the Vital Statistics Act they tend to forget the era prior to this statute.

In 1893, births, if noted at all, were registered often in church records, or in the family bible. Also, the passing of the Factory Act in 1887 revealed that many children could not tell their own ages, and children and adults were illiterate.

It can reasonably be assumed that these reasons might have been the basis for this presumption for otherwise the scope of the act might have been severely limited.

The act permitted a child to give evidence against his parents, or anyone suspected of cruelty or neglect toward him. He did not have to be sworn, if the magistrate felt that he was capable of understanding the proceedings.

While the definition of a neglected child is now legend to all in the field of public welfare, one unusual clause was employed in this act, although it was later deleted.

The clause stated that a child found sleeping in the open air was to be considered neglected. While not too important, it does provide some insight into the living conditions of children at that time, and demonstrates the all inclusive nature of this first statute.

This definition is identical with that employed in the *Industrials Schools Act* of 1874. This earlier statute must have provided the precedent for the Children's Protection Act, and this adoption perhaps proved the success of the previous statute.

THE CURFEW

Section 21 enabled a municipality to pass a bylaw regarding the ringing of a curfew bell.

The bell was to be rung at a specified time each evening, at which hour, all children were to be off the street.

Any child found out later than this was to be taken home and the parents warned. Subsequent offences by the parents made them liable to a fine.

Section 22 made it an offence for any person over 16 to neglect, abandon or wilfully mistreat a child. This offence carried a penalty of \$100 or 3 months at hard labor.

If such a person were found to benefit financially after the death of the child, the fine was increased to \$250 or the sentence imposed to 9 months at hard labor.

The Magistrate or two Justices of the Peace had the right to hear any person with a bona fide belief that a child was neglected.

This section was designed to encourage people to take action where they felt a child was being mistreated and, perhaps was a protection against an action for slander or malicious prosecution. Residence was defined as the municipality where the child had lived for one year, or if no evidence was given to the contrary, where he was apprehended.

The municipality was liable for \$1 a week maintenance, with the right to collect over against the parents.

FOSTER PARENTS

After wardship, the child would be placed in an Industrial School, or a foster home, which was subject to the supervision of the Children's Aid Societies.

If placed in a foster home, the foster parents became guardians, with all the rights under the Apprentices and Minors Act.

The society was to have wardship until the child was 21, or until the parents were fit and able to take him back. The courts were always to consider the best interests of the child, and could refuse the parents custody, if necessary.

In any case, where a child was being tried for any charge and was under 13, the society was to investigate the background of the child and report to the court. From this report the superintendent and magistrate were to formulate a satisfactory plan for the child's future.

In accordance with developments in psychiatry the act was amended in 1903 to incorporate this knowledge and to provide thereby better standards of treatment.

CHILD WELFARE

Section 8 was amended by Sections 8A and 8B.

The former provided that any child apparently under the age of 16 was to be put on probation wherever possible. The probation officer was to take an interest in the child and attempt his reformation.

Here then, are two developments:

The community is beginning to attempt reformation instead of punishment and the treatment of children by psychiatry was to be tried.

Section 8B stated that no child could be placed in a common jail with adults, convicted or not.

A child under 14 who had been arrested was to be granted bail whenever possible and if this could not be done, the sheriff was to locate a benevolent society to care for him until his future could be planned.

The municipality was made liable for his support in the institution. Towns of 10,000 or larger were to provide a home for keeping all children until they could be placed. This home was also to be available for children under 16 who were awaiting trial.

THE CHILD WELFARE ACT

The entire act was repealed in 1908, rewritten and presented in a form substantially the same as the Child Welfare Act of today.

Up to 1908, every major statute pertaining to children had differentiated between boys and girls, the girls' ages always being somewhat higher than those of the boys.

The new act abolished this difference and established all ages at 16. From here on, all other acts adopted this principle and the difference ceased to exist.

The foster parents lost their rights under the *Apprentices and Minors Act*, the societies now retaining the major rights over their wards. Any wards returned home might remain under the supervision of the Children's Aid Societies to ensure suitable standards of care.

The curfew bell was abolished, but the provision for a fine against parents who permitted their children on the streets too late remained.

The act, a source of protection to all children, has been generally recognized as one of the most important of Ontario's welfare acts.

It provides not only protection for neglected children, but the procedure necessary to rehabilitate them.

Moreover, the result of encouraging local participation has been to enlist the sympathetic co-operation of an army of earnest and intelligent citizens who have established an entirely new standard of care for neglected youngsters.

CHILDREN OF UNMARRIED PARENTS

The old *Illegitimate Act* had never been satisfactory and it was at the urging of the Children's Aid Societies and the medical profession that a new bill was finally drafted.

The rapid urban growth of Ontario tended to disorganize family life. The strain was magnified by greater opportunity for sexual licence, made possible by the breakdown of neighborhood associations and the demoralizing effects of low wages paid in many industrial and service occupations.

These facts were evidenced in the tragic increase of destitution, illegitimacy and prostitution.

The predominantly rural background of the communities, steeped in the Victorian attitude, prevented effective control.

People of the rural areas, even though now urbanized, clung to the old ways and failed to adjust their attitudes to urban life.

Prostitution was treated as a crime, and illegitimacy and venereal disease as the just punishment. This treatment only drove it underground and halted any further attempts at rectification.

REFORM COMING

In 1919 Toronto's medical officer of health submitted a strongly worded condemnation to the president of the local board of health which stated in part—

"We are trying to correct immorality by laws themselves immoral. Surely the child born out of wedlock has been sinned against enough without being branded illegitimate even on his birth certificate."

The end result of this protest was the drafting of a new bill known as the *Children of Unmarried Parents Act of 1921*.

Before submission of the bill, extensive research was conducted into the laws of England, Canada, the United States and several European countries.

Ontario was found to be more backward in this type of legislation than even England, and far behind many of the European countries and several of the U.S. jurisdictions.

CHILD WELFARE

Numerous conferences were held with social workers who knew the conditions, and were able to give much concrete and practical advice as to what was needed in the bill.

The Neville Chamberlain Bill, of 1919, presented to the Imperial Parliament in that year, but never passed, was consulted.

This most comprehensive research provided a basis for the Ontario act and a carefully prepared bill was submitted to the legislature in 1921 and passed that same year.

The statute repealed the old Illegitimate Children's Act and instituted an entirely new approach to the maintaining of children born out of wedlock.

The most notable change was the providing of a statutory guardian for the mother and her child, the provincial officer.

While the first act was concerned primarily with the welfare of the state, the new act looked to the welfare of the child, and financial assistance for the mother.

The child, if no one would care for it, could be taken into the custody of the Children's Aid Society, thus providing real protection against abandonment and neglect.

Further, affiliation orders could be made between the provincial officer and the putative father in favour of the mother and child. Legal action could also be taken against the father, with the permission of the provincial officer and if an order was made by the court against him, it could also be made binding upon his estate if the court felt such action was warranted.

Although amended slightly, the act is substantially the same today, as when first drafted.

It has recently been incorporated as part of the Child Welfare Act of 1954, the chief amendments being the ability of the Children's Aid Society to take legal action against the father without permission of the provincial officer and the extension of the limitation period from one to two years, during which the action must be taken.

ADOPTIONS

The same session which saw the passing of the Children of Unmarried Parents Act also saw the enactment of the Adoption Act.

Prior to this act there had never been in Ontario, or the former Province of Upper Canada, any legislation pertaining to adoptions.

All adoptions as such were considered "de facto" and not "de jure." The courts treated them as contracts which could be written or verbal, and all subject to the laws of contracts.

One important difference existed. The courts were always ready to admit that the welfare of the child took precedence over the legal validity of the contract.

Thus, a mother who had given her child to another family to raise, might subsequently be granted custody of the child if the courts felt the child would be better with her.

An adopted child had no rights to the estate of the foster parents at common law.

The object of the Adoption Act was to change these anomalies and to enable anyone of full age to adopt anyone else, provided they were younger and not married to him, and were not his brother, sister, aunt or uncle.

The provincial officer was again made an unnecessary party to the action, and the Children's Aid Society was directed to make investigations on his behalf.

The act was again fully and carefully prepared before submission, and aroused much commendation during its passage through the house.

It gives an adopted child and his parents full legal protection, providing the security and affection of a home and parents for such children. The child was also to share in the estate of the parents, and had all the rights of a natural child to maintenance, education and affection.

So well was the act prepared, that it has only been slightly altered during the past 34 years. The most significant alteration occurred in 1950 when the probation period was lowered from two to one year, and in 1954 when it became part of the Child Welfare Act.

THREE IN ONE

These three acts, now forming the *Child Welfare Act of Ontario*, 1954, can truly be said to be the most significant and meaningful for children, of any Ontario statutes.

Each is a necessary adjunct of the other, and combined they protect and care for the child from birth to majority, as well as providing immeasurable joy and satisfaction for foster parents, many of whom would be otherwise childless.

MOTHERS' ALLOWANCES

The Mothers' Allowances Act, designed to give direct financial assistance to wives whose husbands were deceased, ill, or who had abandoned their families, was introduced in 1920.

The statute provided that if the husband could not be located within four years, or was unable to work, the mother would be eligible for the allowance if she had also been a resident of Ontario for three years prior to the event causing her destitution.

A commission was established to administer the act and to decide on the validity of applications. The act thus attempted to protect the family and to help it continue as a unit, thereby providing the child with a stable family situation.

This statute has undergone several amendments, the most important being in 1952 when the commission was abolished and a single director was appointed.

In 1931, the legislature now recognizing the right of every child to have the necessities of life provided by his parents, passed the *Child's Maintenance Act*.

Today, the act can be found in the RSO, 1950, in the same form as the original bill.

It consists of three sections, making it an offence for parents not to provide their children under 16 with an education and necessities.

Due regard is to be taken to the parents' means and the children's ability to support themselves.

Any parent failing to provide for his children becomes liable to a jail sentence.

WORLD WAR II

Two other statutes resulted from the recent war, the British Child's Guest Act, and the Day Nurseries Act.

The former was passed to provide for the inspection and approval of homes for children fleeing from England. The Children's Aid Societies were given much of the responsibility for this work.

The Day Nurseries Act was a result of the Dominion-Provincial agreement intended to provide day care for children while mothers were engaged in war work.

So successful was the agreement, and the licensed and inspected day nurseries which it established, that after the war the Day Nurseries Act was passed, to continue the care of young children prior to school, whose mothers must continue to work. The nurseries are also used to begin the training of young children before school whether the parents work or not.

DESERTED WIVES

A new *Married Women's Act* was passed in 1897, following the enactment of the Children's Protection Act in 1893.

This statute repealed the old act, and was re-enacted as the *Deserted Wives' Maintenance Act*, later to become the *Deserted Wives' and Children's Maintenance Act*.

The 1897 act provided that a wife could bring action against her husband if she was forced to leave home because of his cruelty. In effect, a wife needed no longer to be bound to a neglectful husband due to fear of financial distress.

In 1922 an important amendment enabled the wife to bring an action for her children's support, as well as her own, thereby providing for the financial stability of the whole family.

The statute also enabled anyone with the consent of the Crown Attorney to bring an action against a father on behalf of a neglected child. The effect of the change has enabled a mother to bring an action for the whole family, or separate actions for herself and for her children.

Adultery remained a bar to any action by the wife for herself but did not bar an action for the children.

The act was again amended in 1948 to permit a judge to make a conditional order against a husband who had failed to appear, but who is still residing in Ontario.

The evidence is then forwarded to the judge in whose jurisdiction the man is residing. He summons the man, hears his evidence, and has the power to confirm the conditional order, or to discharge it. If discharged, it is referred to the original judge and the whole matter reviewed.

CARE OF PARENTS

The *Parents' Maintenance Act*, passed in 1921, is a counterpart to the Deserted Wives' and Children's Maintenance Act.

By this law, children were liable to provide for their parents if the parents were unable to maintain themselves.

The difference between the two acts was mainly that under the former act, before the order was made, the court must have examined all the circumstances of the case, while under the latter, the court had only to determine the ability of the father to pay, and the fact that the desertion existed.

Actually, legislation of this kind is much older than is generally appreciated.

During the reign of Queen Elizabeth I it was provided —

“That the parents, grandparents and children of every blind, poor, old, lame, or incompetent person shall relieve and maintain such person.”

This older statute, of course, was designed to protect the poor rates and was invoked where such a person was likely to become a charge upon the parish.

LEGITIMATION

A necessary component to the Illegitimate Children's Act, was the *Legitimation Act* enacted at the same time.

The act provided that where a child was born out of wedlock, the subsequent marriage of his parents made him legitimate in the eyes of the law.

This most humane enactment has removed the stain from the child and enabled him to be recognized by society as a normal individual. The child was to have all the right of a natural child, with the exception of inheritance. The illegitimate child must take after the legitimate children of a former valid marriage of the father, or of the mother.

So it is, that by 1921, there was indeed a vast volume of legislation pertaining to the care and treatment of children and women.

Unfortunately, there was no one central authority, the acts being administered by various departments.

One result of the Ross Commission on Public Welfare was the establishment in 1930 of the Department of Public Welfare, responsible for almost all the major welfare statutes contained in this report.

During the past quarter century, the department has been relieved of most of the statutes pertaining to juvenile delinquency and the treatment of the youthful offender.

Since its inauguration in 1930, the Department of Public Welfare has continually advanced, recognizing needs and striving to meet them. Because of the department's efforts, Ontario has now become one of the leaders in social welfare legislation.

A Century of Progress in the Welfare of Children

There remains little more to be said concerning the legislation pertaining to children.

All of this has been an attempt to deal with all the legislation during the past 100 years which affected children or reflected society's feelings about them.

After 1893, however, so vast does the legislation become, that it is necessary to be selective.

For this reason, only the statutes actually recognized as child welfare statutes have been discussed, to the exclusion of legislation dealing with education, the treatment of handicapped children, juvenile delinquency, health, and the vast field that such legislation includes.

It is recognized that the study of legislation concerns only one aspect of the forces at work in a community.

This review was not designed to consider external causes in detail, even though the statutes were often only a reflection of the community's thinking.

Due to this consideration, only a sampling of the external sociological forces has been mentioned, where it was felt that such examples tended to bind the legislation of one period with that of another, or to demonstrate the causes behind a major enactment.

In this present period, it has been the government departments which often have taken the leadership in the introduction of new legislation. A new Child Welfare Act was introduced in 1954, and received the approval of the Legislature. It consolidated previous Acts and gave recognition to new concepts. The Child Welfare Act, 1954, includes four major sections:

1. Officers, Societies.
2. Protection and Care of Neglected Children.
3. Protection of Children Born out of Wedlock.
4. Adoption.

No institution or group is more concerned than the present Department of Public Welfare with the development of legislation which will strengthen the family unit or directly assist the child.

C. OWEN SPETTIGUE

Chronological Index

ACT	YEAR PASSED	FINAL DISPOSITION
Orphans' Act	1799	<i>Repealed 1827 by Guardian Act.</i>
Houses of Correction Act	1810	<i>Repealed 1877.</i>
Military Pensions Act	1821	<i>Repealed 1886. R.S.O.</i>
Bastard Children's Act	1826	<i>Consolidated 1859 — now part Criminal Code.</i>
Appointment of Guardians Act	1827	<i>Consolidated in Infants' Act 1877.</i>
Public Health Act	1835	<i>Amended.</i>
Seduction Act	1837	<i>Amended in part — part in Children of Unmarried Parents' Act.</i>
Houses of Industry	1837	<i>Repealed — incorporated in Municipal Act 1849.</i>
Hospitals for Sick and Insane	1839	<i>Repealed — Mental Hospitals Act 1950.</i>
Abortions Act	1841	<i>Consolidated — now in Criminal Code.</i>
Abduction of Females Act		
Carnal Knowledge Act		
Compensation for Persons Killed by Accident or Default Act		
	1847	<i>Repealed — now Fatal Accidents Act 1911.</i>
Municipal Act	1849	<i>Amended — still applicable.</i>
Sale and Disposition of Infants' Real Estate Act	1849	<i>Consolidated — Infants' Act 1887.</i>
Charitable Associations Act	1850	<i>Repealed — 1874 by Benevolent Societies Act.</i>
Apprentice and Minors Act	1851	<i>Amended — now Apprenticeship Act 1950.</i>
Custody of Infants' Act	1855	<i>Consolidated — Infants' Act 1887.</i>
Juvenile Offenders Act	1857	<i>Repealed by Juvenile Offenders Act 1890.</i>
Hospital for Habitual Drunkards Act	1873	<i>Repealed — now in Mental Hospitals Act 1950.</i>
Charity Aid Act	1874	<i>Superseded by Charitable Institutions Act 1931.</i>
Industrial Schools Act	1874	<i>Amended — still applicable.</i>
Infants' Act	1887	<i>Amended — still applicable.</i>
Protection of Infants Act	1887	<i>Amended — now Maternal Boarding Homes Act 1892.</i>

CHILD WELFARE

ACT	YEAR PASSED	FINAL DISPOSITION
Billiard Rooms Act	1887	<i>Consolidated — Minors' Protection Act 1927.</i>
Factory Act	1887	<i>Consolidated — Factory, Shops and Office Buildings Act.</i>
Insurance for Benefit of Wives' and Children's Act	1887	<i>Insurance Act 1924 — still applicable.</i>
Protection of Neglected Children's Act	1888	<i>Repealed 1897. R.S.O. — supplanted by Children's Protection Act.</i>
Regulation of Shops Act	1888	<i>Consolidated — now Factory Shops and Office Buildings Act.</i>
Married Women's Act	1888	<i>Repealed by Deserted Wives' Act 1897.</i>
Committment of Young Persons' Act	1890	<i>Repealed and consolidated in part into Reformatory and Industrial Schools Act.</i>
Juvenile Offenders Act	1890	<i>Repealed and consolidated in part into Reformatory and Industrial Schools Act.</i>
Tobacco Sales Act	1892	<i>Consolidated — now Minors' Protection Act 1927.</i>
Children's Protection Act	1893	<i>Amended — consolidated in Child Welfare Act 1955.</i>
Deserted Wives' Act	1897	<i>Now Deserted Wives' and Children's Maintenance Act.</i>
Mothers' Allowances	1920	<i>Amended — still applicable.</i>
Children of Unmarried Parents Act	1921	<i>Amended — consolidated in Child Welfare Act 1955.</i>
Adoption Act	1921	<i>Amended — consolidated in Child Welfare Act 1955.</i>
Parents' Maintenance Act	1921	<i>Amended — still applicable.</i>
Legitimation Act	1921	<i>Amended — still applicable.</i>
Dependents' Relief Act	1929	<i>Amended — still applicable.</i>
Department of Public Welfare Act	1930	<i>Amended — still applicable.</i>
Charitable Institutions Act	1931	<i>Amended — still applicable.</i>
Children's Maintenance Act	1931	<i>Still applicable.</i>
British Child's Guest Act	1942	<i>Still applicable but unenforced.</i>
Day Nurseries Act	1946	<i>Still applicable.</i>
Child Welfare Act	1955	<i>Still applicable.</i>

ADMINISTRATION

From 1791 until Confederation in 1867, Upper Canada and the later Province of Canada were governed by a Lieutenant Governor and a Governor (appointed by the King), an appointed "Executive or Legislative Council" and elected "Legislative Assembly". The "Council" had the power to veto the Bills of the "Assembly" which created a great deal of friction and eventually led to the struggle for "responsible government".

ACT	DATE ENACTED	DEPARTMENT
Orphans	1799	These early Acts appear to have been administered by the Executive Council.
Houses of Correction	1810	
Military Pensions	1821	
Bastard Children	1826	
Appointment of Guardians	1827	
Public Health	1835	
Houses of Industry	1837	
Seduction	1837	
Hospitals for Sick and Insane	1839	
Abortions	1841	Attorney General
Abduction of Females	1841	Attorney General
Carnal Knowledge of Infants	1841	Attorney General
Compensation for Persons Killed by Accident or Default	1847	Attorney General
Sale and Disposition of Infants Real Estate	1849	Attorney General
Charitable Associations	1850	Attorney General
Apprentices and Minors	1851	Attorney General
Custody of Infants	1855	Attorney General
Juvenile Offenders	1857	Attorney General

CHILD WELFARE

ADMINISTRATION	ACT	DATE ENACTED	DEPARTMENT
Hon. J. S. Macdonald 1867-71	Hospitals for Habitual Drunkards	1873	Attorney General
Hon. E. Blake 1871-72	Industrial Schools	1874	Attorney General
Hon. Sir O. Mowat 1872-96	Charity Aid Act	1874	Public Works
	Infants	1887	Attorney General
	Protection of Infants	1887	Attorney General
	Billiard Rooms	1887	Attorney General
	Factory Regulations	1887	Public Works
	Insurance for Benefit of Wives and Children	1888	Attorney General
	Protection of Neglected Children	1888	Attorney General
	Regulation of Shops	1888	Attorney General
	Married Women's	1888	Attorney General
	Commitment of Young Persons	1890	Education
	Juvenile Offenders	1890	Attorney General
	Truancy	1891	Education
	Sale of Tobacco	1892	Attorney General
Hon. A. S. Hardy 1896-99	Children's Protection	1893	Provincial Secretary
Hon. G. M. Ross, 1899-1905.	Deserted Wives	1897	Attorney General

ADMINISTRATION	ACT	DATE ENACTED	DEPARTMENT
Hon. Sir J. P. Whitney 1905-14			
Hon. Sir Wm. H. Hearst 1914-19			
Hon. E. C. Drury 1919-23	Mothers' Allowances	1920	Labour
Hon. G. H. Ferguson 1923-30	Children of Unmarried Parents	1921	Attorney General
	Adoption	1921	Attorney General
	Parents Maintenance	1921	Attorney General
	Legitimation	1921	Attorney General
	Dependents Relief Act	1929	A.G.
Hon. G. S. Henry 1930-34	Department of Public Welfare	1931	Public Welfare
	Charitable Institutions	1931	Public Welfare
	Children's Maintenance	1931	Attorney General
Hon. M. F. Hepburn 1934-42	British Child's Guest Act	1942	Public Welfare
Hon. C. D. Conant 1942-43			
Hon. H. C. Nixon 1943-43			
Hon. G. A. Drew 1943-48	Day Nurseries Act	1946	Public Welfare
Hon. T. S. Kennedy 1948-49			
Hon. L. M. Frost 1949.	Child Welfare Act	1955	Public Welfare

3 1761 11470812 6

